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CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1858

Introduced by Assembly Member Perea

February 19, 2014

An act to amend Section 9503 of, and to add Chapter 9 (commencing with Section 9901) to Division 9 of, the Commercial Code, relating to secured transactions.

LEGISLATIVE COUNSEL'S DIGEST

AB 1858, as amended, Perea. Commercial law: secured transactions.

The Uniform Commercial Code - Secured Transactions governs security interests in collateral, including personal property and fixtures, as well as certain sales of accounts, contract rights, and chattel paper. That code, among other things, specifies requirements and procedures regarding perfecting a security interest, including the filing of a financing statement with the Secretary of State. Existing law specifies that a financing statement sufficiently provides the name of a debtor, where the debtor is an individual, if it provides the individual name of the debtor or the surname and first personal name of the debtor.

This bill would revise the manner in which a financing statement sufficiently provides the name of the debtor, where that debtor is an individual, to provide that, where the Department of Motor Vehicles has issued a driver's license that has not expired or identification card

that has not expired to the individual, the statement sufficiently provides the name of the debtor only if the statement provides the name of the individual indicated on the license or card and, if the individual has not been issued a driver's license or identification card, the statement sufficiently provides the name of the debtor if it provides the individual name of the debtor or the surname and first personal name of the debtor. The bill would also implement transitional rules for carrying out these provisions.

Existing provisions of the Unruh Civil Rights Act, with certain exceptions, prohibit various forms of arbitrary discrimination by business establishments.

This bill would make it a violation of the Unruh Civil Rights Act for a secured party or proposed secured party to decline to provide credit to a debtor or proposed debtor, or offer to make the terms and conditions of such credit less favorable to the debtor or proposed debtor, if that decision was based on the fact that the debtor's name to be included on the financing statement is or would be that provided by a debtor to whom the Department of Motor Vehicles has not issued a driver's license that has not expired or an identification card that has not expired and all elements that would be required to establish a claim for violation of the Unruh Civil Rights Act are established.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 9503 of the Commercial Code, as
2 amended by Section 16 of Chapter 531 of the Statutes of 2013, is
3 amended to read:
4 9503. (a) A financing statement sufficiently provides the name
5 of the debtor only if it does so in accordance with the following
6 rules:
7 (1) Except as otherwise provided in paragraph (3), if the debtor
8 is a registered organization or the collateral is held in a trust that
9 is a registered organization, only if the financing statement provides
10 the name that is stated to be the registered organization's name on
11 the public organic record most recently filed with or issued or
12 enacted by the registered organization's jurisdiction of organization
13 which purports to state, amend, or restate the registered
14 organization's name.

1 (2) Subject to subdivision (f), if the collateral is being
2 administered by the personal representative of a decedent, only if
3 the financing statement provides, as the name of the debtor, the
4 name of the decedent and, in a separate part of the financing
5 statement, indicates that the collateral is being administered by a
6 personal representative.

7 (3) If the collateral is held in a trust that is not a registered
8 organization, only if the financing statement satisfies both of the
9 following conditions:

10 (A) Provides, as the name of the debtor, either of the following:

11 (i) If the organic record of the trust specifies a name for the
12 trust, the name specified.

13 (ii) If the organic record of the trust does not specify a name
14 for the trust, the name of the settlor or testator.

15 (B) In a separate part of the financing statement, the following
16 information is provided, as applicable:

17 (i) If the name is provided in accordance with clause (i) of
18 subparagraph (A), the financing statement indicates that the
19 collateral is held in a trust.

20 (ii) If the name is provided in accordance with clause (ii) of
21 subparagraph (A), the financing statement provides additional
22 information sufficient to distinguish the trust from other trusts
23 having one or more of the same settlors or the same testator and
24 indicates that the collateral is held in a trust, unless the additional
25 information so indicates.

26 (4) Subject to subdivision (g), if the debtor is an individual to
27 whom the Department of Motor Vehicles has issued a driver's
28 license that has not expired or an identification card that has not
29 expired, only if the financing statement provides the name of the
30 individual indicated on that driver's license or identification card.

31 (5) If debtor is an individual to whom paragraph (4) does not
32 apply, only if the financing statement provides the individual name
33 of the debtor or the surname and first personal name of the debtor.

34 (6) In other cases, according to the following rules:

35 (A) If the debtor has a name, only if the financing statement
36 provides the organizational name of the debtor.

37 (B) If the debtor does not have a name, only if the financing
38 statement provides the names of the partners, members, associates,
39 or other persons comprising the debtor, in a manner that each name
40 provided would be sufficient if the person named were the debtor.

(7) Subject to the ~~last~~ *following* sentence of this paragraph, it is a violation of Section 51 of the Civil Code for a secured party or proposed secured party to decline to provide credit to a debtor or proposed debtor, or offer to make the terms and conditions of the credit less favorable to the debtor or proposed debtor if (A) that decision was based on the fact that the debtor's name to be included on the financing statement is or would be that provided under paragraph (5) rather than under paragraph (4), and (B) all elements that would be required to establish a claim for violation of Section 51 ~~(including any elements relating to motivation or state of mind)~~ *of the Civil Code* are established. Any affirmative defenses that would be available to a claim under Section 51 *of the Civil Code* would be affirmative defenses to a claim under this paragraph. *Nothing in this paragraph shall be construed to alter, expand, limit, or negate any other rights, defenses, or remedies under Section 51 of the Civil Code.*

(b) A financing statement that provides the name of the debtor in accordance with subdivision (a) is not rendered ineffective by the absence of either of the following:

(1) A trade name or other name of the debtor.

(2) Unless required under subparagraph (B) of paragraph (6) of subdivision (a), names of partners, members, associates, or other persons comprising the debtor.

(c) A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.

(d) Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.

(e) A financing statement may provide the name of more than one debtor and the name of more than one secured party.

(f) The name of the decedent indicated on the order appointing the personal representative of the decedent issued by the court having jurisdiction over the collateral is sufficient as the "name of the decedent" under paragraph (2) of subdivision (a).

(g) If the Department of Motor Vehicles has issued to an individual more than one driver's licenses or identification cards of a kind described in paragraph (4) of subdivision (a), paragraph (4) of subdivision (a) refers to the most recently issued license or card.

(h) For purposes of this section:

1 (1) “Driver’s license” includes a driver’s license issued pursuant
2 to subdivision (a) of Section 12801.9 of the Vehicle Code.

3 (2) “Name of the settlor or testator” means either of the
4 following:

5 (A) If the settlor is a registered organization, the name that is
6 stated to be the settlor’s name on the public organic record most
7 recently filed with or issued or enacted by the settlor’s jurisdiction
8 of organization which purports to state, amend, or restate the
9 settlor’s name.

10 (B) In other cases, the name of the settlor or testator indicated
11 in the trust’s organic record.

12 SEC. 2. Chapter 9 (commencing with Section 9901) is added
13 to Division 9 of the Commercial Code, to read:

14
15 CHAPTER 9. TRANSITION PROVISIONS FOR 2014 AMENDMENTS
16

17 9901. (a) The changes to this division made by the act adding
18 this chapter become operative on January 1, 2015.

19 (b) This chapter applies to a security interest only to the extent
20 that, with respect to such security interest, both of the following
21 apply:

22 (1) A debtor is an individual.

23 (2) A financing statement filed before January 1, 2015, provides
24 the name of an individual as a debtor.

25 (c) If a security interest is within the scope of Chapter 8
26 (commencing with Section 9801), that chapter continues to apply.
27 To the extent there is a conflict between Chapter 8 (commencing
28 with Section 9801) and this chapter, this chapter governs.

29 9902. (a) Except as otherwise provided in this chapter, the
30 changes to this division made by the act adding this chapter apply
31 to a transaction or lien within its scope, even if the transaction or
32 lien was entered into or created before January 1, 2015.

33 (b) The changes to this division made by the act adding this
34 chapter do not affect an action, case, or proceeding commenced
35 before January 1, 2015.

36 ~~(c) Paragraph (7) of subdivision (a) of Section 9503, as added~~
37 ~~by the act adding this chapter, applies only with respect to events~~
38 ~~occurring on or after January 1, 2015.~~

39 9903. A security interest that is a perfected security interest
40 immediately before January 1, 2015, is a perfected security interest

1 under this division as amended by this act if, as of January 1, 2015,
2 the applicable requirements for attachment and perfection under
3 this division as of that date are satisfied without further action.

4 9904. A security interest that is an unperfected security interest
5 immediately before January 1, 2015, becomes a perfected security
6 interest as follows:

7 (a) Without further action, on January 1, 2015, if the applicable
8 requirements for perfection under this division as amended by this
9 act are satisfied before or at that time.

10 (b) When the applicable requirements for perfection are satisfied
11 if the requirements are satisfied after that time.

12 9905. (a) The filing of a financing statement before January
13 1, 2015, is effective to perfect a security interest to the extent the
14 filing would satisfy the applicable requirements for perfection
15 under this division as amended by this act.

16 (b) The changes to this division made by the act adding this
17 chapter do not render ineffective an effective financing statement
18 that, before January 1, 2015, is filed and satisfies the applicable
19 requirements for perfection under this division (including giving
20 effect to Chapter 8 (commencing with Section 9801)) as it existed
21 before giving effect to the changes to this division made by the
22 act adding this chapter. However, except as otherwise provided in
23 subdivision (c), the financing statement ceases to be effective at
24 the time the financing statement would have ceased to be effective
25 had the changes to this division made by the act adding this chapter
26 not become effective and operative.

27 (c) The timely filing of a continuation statement on or after
28 January 1, 2015, continues the effectiveness of a financing
29 statement filed before January 1, 2015, if the financing statement
30 (including any amendments) contains the name of the debtor in
31 accordance with the requirements of Chapter 5 (commencing with
32 Section 9501) as amended by the act adding this chapter for an
33 initial financing statement.

34 (d) A financing statement (including any amendments) that
35 includes a financing statement filed before January 1, 2015, and
36 a continuation statement filed after January 1, 2015, is effective
37 only to the extent that they satisfy the requirements of Chapter 5
38 (commencing with Section 9501) as amended by the act adding
39 this chapter for an initial financing statement.

1 9906. A person may file an initial financing statement or a
2 continuation statement under this chapter if the following
3 conditions are satisfied:

4 (a) The secured party of record authorizes the filing.

5 (b) The filing is necessary under this division to accomplish
6 either of the following:

7 (1) To continue the effectiveness of a financing statement filed
8 before January 1, 2015.

9 (2) To perfect or continue the perfection of a security interest.

10 9907. The changes to this division made by the act adding this
11 chapter determine the priority of conflicting claims to the collateral.
12 However, if the relative priorities of the claims were established
13 before those changes become effective and operative on January
14 1, 2015, this division as it existed before those changes become
15 effective and operative determines priority.